

BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TONY'S PLUMBING COMPANY

P. O. Box 1260

Santa Clara, CA 95050

Juan Antonio Vasquez, Sole Owner

License No. **682234**, C-36

Respondent

CASE NO. N2010-264

OAH NO. 2011050864

PROPOSED DECISION
AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Registrar of Contractors as his Decision in the above-entitled matter. The failure to comply with the provisions of the probation will cause the probationary period to be extended, until said terms are complied with or the discipline is reimposed.

IT IS FURTHER ORDERED that **TONY'S PLUMBING COMPANY**, License Number **682234**, on or after the effective date of this decision shall file a bond or post a cash deposit in the amount of \$15,000.00 for a period of not less than three years pursuant to the provisions of Section 7071.8 of the Business and Professions Code, and that respondent is hereby notified that practice under the license may not be restored until satisfactory evidence of such bond or cash deposit is on file with the Registrar. The failure to obtain a Disciplinary Bond will cause the probationary period not to be in effect, until the required bond is obtained, submitted to and accepted by the Registrar.

IT IS THE responsibility of the respondents, named in this Decision, to read and follow the terms and conditions of the Order. The deadlines for meeting the terms and conditions are based upon the EFFECTIVE DATE of the Decision. No notices or reminders will be sent, as to the compliance of the terms and conditions. Proof of payments of restitution if ordered, and payments for the Cost of Investigation and Enforcement are to be sent to CSLB, Sacramento Case Management, Post Office Box 26888, Sacramento, CA 95826.

This Decision shall become effective on December 5, 2011.

IT IS SO ORDERED November 1, 2011.


Stephen P. Sands
Registrar of Contractors

INFORMATION PURSUANT TO §11521 OF THE GOVERNMENT CODE

If you wish to file a Petition for Reconsideration pursuant to Government Code §11521, the text which appears below for your review, the Petition must be received prior to the effective date of the Decision. However, please be aware that the Board needs approximately 5 working days to process a Petition. Petitions should be sent to the following address: CONTRACTORS STATE LICENSE BOARD, P.O. BOX 269121, SACRAMENTO, CA 95826, ATTN: LEGAL ACTION DEPUTY. Fax documents can be sent to (916) 255-1688.

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

BEFORE THE
REGISTRAR OF CONTRACTORS
CONTRACTORS' STATE LICENSE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JUAN ANTONIO VAZQUEZ, Sole Owner,
d.b.a. TONY'S PLUMBING COMPANY,

Contractor's License No. 682234, C-36,

Respondent.

Case No. N2010-229

OAH No. 2011050864

PROPOSED DECISION

Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, heard this matter on September 14, in Oakland, California.

Complainant Wood Robinson, Enforcement Supervisor I, Contractors' State License Board, was represented by Shana A. Bagley, Deputy Attorney General.

Respondent Juan Antonio Vazquez was represented by Jeffrey S. Kravitz, Attorney at Law.

The record closed and the matter was submitted for decision on September 14, 2011.

FACTUAL FINDINGS

1. On December 15, 1993, the Registrar of Contractors issued contractor's license number 682234, classification C-36 (plumbing contractor), to respondent Juan Antonio Vazquez, sole owner, doing business as Master Rooter. Over the years, respondent changed the name of his business several times. Effective January 5, 2010, respondent changed the name of his business to Tony's Plumbing Company. Respondent's license was in effect at all times relevant to the instant proceedings and will expire on December 31, 2011, unless renewed.

2. On July 11, 2000, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted, upon his plea of no contest, of two violations of

Penal Code section 288, subdivision (a) (lewd acts with a child under age 14). These felony offenses are substantially related to the qualifications, functions or duties of a licensed contractor insofar as they evidence a substantial disregard for the health, safety or welfare of the public. (Cal. Code Regs., tit. 16, § 868, subd. (e).)

The court suspended imposition of sentence and placed respondent on formal probation for three years. The terms of respondent's probation included serving nine months in jail and completing psychological treatment.¹ The court also ordered respondent to register as a sex offender, pursuant to Penal Code section 290.

3. According to the police reports, the facts and circumstances surrounding respondent's offenses are that in October 1999 respondent kissed, touched and fondled the 11-year-old daughter of his secretary. At the time of the offense, respondent was babysitting for the victim, as a favor to her mother.

Rehabilitation Evidence

4. Respondent is 47 years old and has been a licensed plumber for 18 years. He has not had contact with the victim or her mother since the offense. Respondent denies that he molested the victim. He entered a no contest plea to the charges because the negotiated plea guaranteed that respondent would not spend any time in jail. Respondent has complied with all registration requirements mandated by Penal Code section 290.

5. At the time of the offenses respondent owned a plumbing business. Some time after he was convicted, respondent filed for bankruptcy and began working for someone else. He currently owns Tony's Plumbing Company, which he operates from his home. Respondent will not perform work for clients where a minor is present, unless an adult is also present.

6. Respondent has "moved on" from his criminal convictions, and he has matured over the past 10 years. Respondent has been open and honest with his family about his convictions. Respondent lives with his girlfriend of 13 years, and his 16-year-old son. He also has a grown daughter and stepson.

7. Jane Lewis, MFT: Following his conviction in 2000, respondent completed psychological treatment with Lewis. Lewis has treated convicted sex offenders for 36 years, including the time when she worked as an intern. Lewis testified at the hearing regarding her treatment of respondent, as well as her assessment of his danger to the public.

8. Respondent was required to attend treatment with Lewis for an indefinite period of time. Lewis found respondent open, honest and cooperative. After about six months of treatment, Lewis discharged respondent because she determined that he was

¹ Respondent served his time in a work furlough program, which lasted only five months.

rehabilitated and presented a low-risk to re-offend. She noted that in her experience, "seldom [has she] seen anyone as few times" as she saw respondent. Lewis describes respondent as "really very normal." Lewis did not form a diagnosis for respondent because he did not require one. Respondent returned to treatment in March 2011. He attended 11 counseling sessions. During this time, respondent gained insight into the problems he was having with his girlfriend.

9. Lewis does not believe that respondent poses a threat to the public. She recommends that respondent be allowed to retain his license. Lewis feels very confident in her ability to assess the risk posed by her clients, because "after 30 years of experience, [she is] good at picking up on people." She stated that she "does not think that [respondent] was an offender to begin with."

10. Christopher N. Heard, J.D., Ph.D.: At the hearing Dr. Heard offered his expert opinion regarding respondent's risk to the public, based upon respondent's Penal Code 288 offenses. Dr. Heard interviewed respondent for 90 minutes and reviewed the police report and court documents.

11. During his interview with Dr. Heard, respondent denied having any sexual contact with the victim. Respondent told Dr. Heard that he believed the victim's mother had stolen money his business. For this reason, respondent thought that she instructed her daughter to fabricate molestation charges against respondent. Dr. Heard was not disturbed by respondent's denial of the accusations because such denials are "quite common" and have do not correlate with any risk of re-offending. Dr. Heard assumed, for the purpose of his evaluation, that respondent did commit the acts alleged by the victim.

12. Dr. Heard concluded, "to a reasonable scientific certainty," that respondent presents an "extremely low" risk of re-offending. He based his conclusion on research regarding recidivism rates of sex offenders. According to Dr. Heard, such research indicates that sex offenders re-offend at a rate of 7 to 8 percent. This rate drops 50 percent for every five years that an offender remains offense-free. Because respondent has remained offense-free for 10 years, Dr. Heard determined that respondent's risk for re-offending was one or two percent.

13. In forming his opinion, Dr. Heard found that respondent did not possess what he described as "risk factors" for re-offending, such as pedophilia, antisocial personality disorder, or substance abuse. He noted that respondent was in a long-term relationship with his girlfriend, and he did not exhibit an interest in prepubescent children. Dr. Heard also found that respondent possessed sound insight and judgment.

Costs

14. The Board has incurred Attorney General costs in the amount of \$2,615 in the enforcement of this matter. These costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 7123 provide that a conviction of a crime substantially related to the qualifications, functions or duties of a contractor constitutes cause for disciplinary action. A crime is substantially related to the qualifications, functions, or duties of a contractor "if it evidences present or potential unfitness . . . to perform the functions authorized by the license in a manner consistent with the public health, safety and welfare." (Cal. Code Regs., tit. 16, § 868.) These crimes include "crimes or acts that indicate a substantial or repeated disregard for the health, safety or welfare of the public." (*Ibid.*) Respondent's convictions for committing a lewd act on a child under 14, set forth in Factual Finding 2, are "substantially related" offenses insofar as they evidence a substantial disregard for the health, safety or welfare of the public. Accordingly, cause for disciplinary action exists under Business and Professions Code sections 490 and 7123.

2. The Board has developed disciplinary guidelines which are set forth in California Code of Regulations, title 16, section 871. In determining the appropriate disciplinary penalty, the factors to be considered include the nature and severity of the acts, the actual or potential harm to the public, work that was potentially hazardous to the health, safety or welfare of the public, the number and variety of current violations, evidence in mitigation or rehabilitation, and evidence of respondent's compliance with the terms of probation.

Additionally, pursuant to California Code of Regulations, title 16, section 869, subdivision (a)(1)(A), the Board may consider a licensee rehabilitated from a felony conviction that is substantially related to the qualifications, functions or duties of a licensee, if seven years have passed from the completion of probation, providing that the licensee has not engaged in any further criminal activity that is substantially related to the duties of a licensee. The amount of time that may be needed to establish rehabilitation under this subdivision may be increased or decreased, based upon a number of factors, including the nature and severity of the crime, evidence regarding the licensee's fitness for licensure, and any other rehabilitation evidence. (Cal. Code Regs., tit. 16, § 869, subd. (a)(2).)

3. In consideration of the criteria set forth above, it is determined that respondent is rehabilitated to the extent that the public interest will not be harmed if he is allowed to retain his contractor license. The following factors were considered in making this determination: Over 11 years have passed since respondent's convictions, without any additional incidents. Respondent's therapist, who treated him during his probationary period as well as this year, determined that he does not pose a risk to the public. Expert testimony also established that respondent's risk of re-offending is extremely low. Respondent has complied with the terms of his probation, and he has lived a law-abiding and productive life for a sustained period of time. He appears firmly committed to working hard, maintaining his family relationships, and staying out of trouble. Accordingly, it would not be contrary to the public interest to allow respondent to retain his contractor license. In light of the extremely serious nature of respondent's offenses, respondent's license will be placed on probation subject to terms and conditions set forth in the order below.

Other Matters

4. Business and Professions Code sections 7097 and 7098 together provide that, when a contractor's license is suspended or revoked, the Registrar may suspend or revoke any additional license issued in the name of the licensee or for which the licensee furnished the qualifying experience and appearance.

5. Business and Professions Code section 7121 provides that if an individual has had his license revoked, that individual shall be prohibited from serving as an officer, director, associate, partner or qualifying individual of a licensee, and any licensee which employs, elects, or associates with that individual in any capacity other than as a nonsupervising bona fide employee shall be subject to disciplinary action.

6. Business and Professions Code section 7121.5 provides that the qualifying individual on a license that has been revoked shall be prohibited from serving as an officer, director, associate, partner, or qualifying individual of a licensee, whether or not the individual had knowledge of or participated in the prohibited acts or omissions for which the license was revoked, and the employment, election, or association of such person by a licensee shall constitute grounds for disciplinary action.

Costs

7. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing act may be required to pay a sum not to exceed the reasonable costs of enforcement of the case. By reason of the matters set forth in Legal Conclusion 1, cause exists to require respondent to pay cost recovery.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing Board must consider in assessing costs. The Board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; and the Board must consider a respondent's ability to pay.

Here, respondent used the hearing process to present rehabilitation evidence that was considered in determining that a stayed revocation with probation, rather than outright revocation, should be imposed. For this reason, it is determined that cause exists to require respondent to pay the Registrar of Contractors cost recovery in the sum of \$2,115. This represents a reduction of \$500 from the amount requested by complainant.

ORDER

1. Contractor's license number 682234 issued to respondent Juan Antonio Vazquez, sole owner and doing business as Tony's Plumbing Company, is revoked. However, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

a. Respondent shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.

b. The probationary license issued to respondent may be summarily suspended prior to hearing by order of the Registrar in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a contractor, or for any public offense. The Registrar may, in his or her discretion, summarily suspend the probationary license prior to hearing upon receipt of notice by the Registrar that respondent has been arrested for any public offense that is substantially related to the qualifications, functions or duties of a contractor.

c. Respondent shall comply with any CSLB employee assigned to monitor his probation compliance. Respondent shall report to this employee on such frequency and in such fashion as the Registrar designates regarding compliance with the probationary terms and conditions. Respondent shall, at all times, keep the Registrar informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Registrar or its designee. Under no circumstances shall a post office box serve as an address of record during the period of probation.

d. Respondent and any of respondent's personnel of record shall appear in person for interviews with the Regional Deputy or designee upon request and reasonable notice.

e. Respondent shall pay \$2,115 to the Registrar as reimbursement of the costs of investigation and enforcement of this matter on such terms and conditions as the Registrar shall determine. Probation may be extended by the Registrar, in the Registrar's exclusive discretion, for up to an additional two years to satisfy this condition.

f. Respondent shall submit to the Registrar upon demand during the probation period copies of documents directly related to respondent's construction operations.

g. If respondent violates probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed. However, the Registrar may impose the

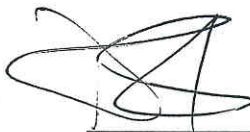
disciplinary order without giving respondent an opportunity to be heard should respondent fail to comply with the terms and conditions of the Registrar's restitution order.

h. Upon successful completion of probation, respondent's license will be fully restored.

2. In accordance with Business and Professions Code sections 7097 and 7098, the Registrar of Contractors may revoke any other license for which Juan Antonio Vazquez furnished the qualifying experience.

3. In accordance with Business and Professions Code sections 7121 and 7121.5, Juan Antonio Vazquez is prohibited from serving as an officer, director, associate, partner, or qualifying individual of any licensee during the period that discipline is imposed upon license number 682234 issued to respondent Juan Antonio Vazquez, and any licensee which employs, elects, or associates with Juan Antonio Vazquez shall be subject to disciplinary action.

DATED: 10/6/11



DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings